THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.2050 of 2006

Between:

Sakhamuri Prasad Babu, S/o.Subba Rao

..... PETITIONER

AND

The Commissioner,

Endowments Department, Andhra Pradesh.

And others

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.2050 of 2006

ORDER:

The petitioner is a contractor. He was awarded the work of reconstruction of temple, construction of Mukhamandapam and reconstruction of Dhwajasthambham of Sri Bhavanarayana Swamy Temple, Narasaraopet, Guntur District. As per the conditions of the tender as well as the agreement entered into by the third respondent with the petitioner, the work shall be completed within a period of nine months from the date of the agreement i.e., 01.11.2004. After 31.7.2005, the Deputy Executive Engineer, Endowments Department sent a report to the second respondent informing that the petitioner has not completed the work and that he has not made any progress nor completed roof slab. The Deputy Commissioner, therefore, imposed a fine of Rs.5,000/- on the petitioner, as per the terms of the agreement. Even thereafter, the work was not completed, and therefore, by proceedings in Rc.No.A1/1224/05 dated 23.1.2006, the second respondent cancelled the tenders relating to the temple works and directed the third respondent to invite fresh short tenders and complete the work by 31.5.2006. This is challenged in the writ petition.

The learned Counsel for the petitioner submits that the work of reconstruction of the

temple and Mukhamandapam involved lot of carving work, and therefore, considerable time is taken. Secondly, he would submit that due to climatic conditions the work got delayed and the petitioner brought the same to the notice of the respondents 2 and 3 by sending number of representations, in vain. The learned Counsel, therefore, submits that the cancellation of the contract is illegal and arbitrary.

The learned Assistant Government Pleader for Endowments has taken this Court through the impugned order and submits that though the petitioner was required to complete the work by 31.7.2005, he did not complete the work and by allowing sufficient time, a report was sent by the Executive Officer on 07.10.2005. The matter was pending with the second respondent till January 2006 and even during this period, the petitioner did not complete the work. Therefore, the learned Assistant Government Pleader submits that the impugned order does not suffer from any illegality.

The impugned order dated 23.1.2006 contains the following.

> Three works are entrusted to the contractor namely Sri S.Prasad Babu, Angalakuduru (v) at the rate of 8% excess over the sanctioned estimated rates based on the tenders approved by the Commissioner, Endowments Department, A.P., Hyderabad in the reference IInd cited. The agreement has been concluded by the Executive Officer of the subject Temple and contractor on 01.11.2004. The agreement period is '9' months and time is completed by 31.7.2005. But the contractor has not completed the Roof Slab also. Then the Executive Officer of the subject temple has issued a Register notice to the contractor on 25.7.2005 for completion of the work. But the contractor has not turned up about the completion of works.
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> Based on the report of the Deputy Executive Engineer, Endowments Department, Guntur report, the Deputy Commissioner, Endowments Department, Guntur has imposed fine of Rs.5,000/- to the contractor in the reference 4th cited. Then the Executive Officer of the subject Temple has submitted report to this office for cancellation of tenders and issue departmental execution orders for the above works in the V cited.

A reading of the above would show that the petitioner on his own volition and knowing fully well about various difficulties involved in temple work, accepted the work and entered into the agreement. As per the agreement, it is not denied – if the work is not completed within the stipulated time of nine months, it is open to the employer to cancel the tender and call for fresh tenders. That was what was precisely done and this Court does not find any arbitrariness in the same. If the petitioner is aggrieved by the alleged breach of contract by the employer, petitioner's remedy lies elsewhere and writ petition is not a proper remedy.

The writ petition is accordingly dismissed. No costs.

(V.V.S. RAO,J)

February 03, 2006.

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